IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

FRIDAY, THE 30TH MARCH 2007 / 9TH CHAITHRA 1929

CRL.A.No. 2289 of 2006()

AGAINST THE JUDGEMENT/ORDER IN CRLP.572/2006 Dated 15/11/2006
CC.1009/2001 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOCHI

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APPELLANT: PETITIONER/COMPLAINANT

M/S.NATIONAL PAPER & CHEMICALS,
POST OFFICE LINK ROAD, ERNAKULAM, KOCHI.

BY ADV. SRI.N.K.SOMASEKHARAN

RESPONDENTS: ACCUSED AND STATE

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1. V.A.KHADER,
PROPRIETOR, KUNJHAVAS PRODUCTS, CHALAD,
KANNUR DISTRICT.

2. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.SIRAJ KAROLY
PUBLIC PROSECUTOR SRI.THOMAS JOHN AMBOOKAN.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No. 2289 of 2006

Dated this the 30th March, 2007.

J U D G M E N T

The complainant before the Judicial First Class Magistrate Court-II, Kochi, is the appellant. He preferred a complaint under Section 138 of the Negotiable Instruments Act, as C.C.No.1009/2001. When the case was posted, there was absence of the complainant, as well as his pleader. Therefore, the complaint was dismissed and the accused acquitted. Hence this appeal, on obtaining leave, of this Court.

2. When the appeal came up for consideration, there was no representation from the counsel for the appellant. Nevertheless, I have posted this matter for disposal. There is no representation today also. Counsel for the first respondent, accused, submits that the order of acquittal of the accused may not be interfered with, and the appeal may also be dismissed.

3. In the appeal memorandum, it is stated by the appellant that the appellant was laid up on 30.5.2006. An application was filed stating that the appellant was laid up and he could not be

present before the court below. It was allowed, and the case was adjourned to 31.5.2006. But the Advocate who was appearing for the appellant before the court below could not know the exact date of posting, which was on the next day, 31.5.2006, and, therefore, could not notify the day to the appellant, and the counsel was also absent. Hence, the complaint was dismissed on 31.5.2006 itself. It is, therefore, prayed that an opportunity may be given to agitate the matter before the court below, and the impugned order may be set aside.

4. Though I agree with the submissions of the counsel for the first respondent, accused, justice is to be done to the accused as well. The case was adjourned from 30.5.2006 to 31.5.2006. It was a bona fide mistake on the part of the counsel of the lower court advocate in not specifically recording the date of adjournment. The learned counsel for the first respondent submits during the hearing that the learned counsel, Sri.N.K.Somasekharan, who is appearing before this Court was also the counsel who was representing the appellant before the court below, as could be seen from the order.

5. In view of the above facts situation, I am of the view that an opportunity be given to the parties to raise their contentions before the court below. Therefore, I set aside the impugned order, dated 31.5.2006, and restore C.C.No.1009/2001, to the file of the Judicial First Class Magistrate Court-II, Kochi.

6. The parties shall appear before the court below on 7.5.2007.

7. The learned Magistrate shall dispose of the matter, at the earliest, in any case, within four months from the date of appearance of the parties before that Court.

Criminal Appeal is allowed as above.

J.M. JAMES,
JUDGE

nj.